THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :19.04.2007

\+ WP(C) No.2685/2007

R. N. J. Exports Pvt. Ltd. and Another ...Petitioners

- versus -

UNION OF INDIA & ORS. ...Respondents

Advocates who appeared in this case:

For the Petitioners : Mr M. L. Rawal, Sr. Advocate with Mr Kuljeet Rawal
For the Respondents : Mr P. P. Malhotra, ASG with Mr Chetan Chawla and Mr Gaurav Duggal

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition has been filed, impugning the letter dated 27.02.2007 received by the petitioner, informing the petitioner that the Appellate Committee considered its request for waiver of pre-deposit of the penalty amount of Rs. 2 crores and found that a bank guarantee of Rs. 30 lacs would be justified. It was also communicated to the petitioner that there was no supporting evidence that the petitioner would face undue hardship in furnishing

a bank guarantee of Rs. 30 lacs.

2. Mr Rawal, the learned senior counsel who appears on behalf of the petitioner, submits that this is the second round before the Appellate Authority. On the first occasion, when the matter had reached the Appellate Authority, the said authority by an order dated 11.08.1997 remanded the matter to the adjudicating authority to return a finding specifically on the following points:-

(a) Whether the imported material was disposed of before the export obligation was fulfilled;

(b) Whether part of the export obligation had been executed through products not manufactured by the supporting manufacturers;

(c) Whether the Joint DGFT has accounted 100% export obligation on the basis of other supporting records filed by the petitioner.

This remand order was also made in the context of the circular No. 4/93 dated 04.03.1993.

3. The adjudicating authority had passed an order-in-original on 31.10.2005, after the said remand. It is against this order-in-original that an appeal had been filed before the Appellate Authority and a prayer was made for waiver of pre-deposit of the penalty amount of Rs. 2 crores. It is on that application that the said communication, which is impugned herein, was issued to the petitioner.

4. Mr Rawal, first of all, contended that the communication is not an order. He had also made a request for supply of a copy of the order, which was not responded to. Mr Rawal secondly contended that the request for waiver ought to have been considered in the correct perspective. He submitted that the order-in-original dated 31.10.2005 went beyond the scope of remand. In the context of the appellate order passed on 11.08.1997, he submitted that the scope of the remand was limited to the three points referred to above. Reading the same, it was apparent that the adjudicating authority was to return a finding as to whether the imported material was disposed of by the petitioner before the export obligation was fulfilled. He submits that this assumes that the export obligation was fulfilled but the only contention was whether the imported material was disposed of before the same was done. The other issue was with regard to the manner in which the said circular No.4/93 would operate in the facts of the present case. He submits that the adjudicating authority did not return a finding as required by the Appellate Authority. On the other hand, the adjudicating authority went on an entirely different line and concluded that the export obligation itself had not been met. He submitted that apart from the fact that the adjudicating authority was not required to go into this question, it is also based on mis appreciation of facts. He submitted that the entire amount with regard to the exports had been received in US dollars and not in rupees.

5. Mr P. P. Malhotra, the learned Additional Solicitor General, who appeared on advance notice, was also heard. He submitted that although the impugned communication dated 27.02.2007 is not an order by itself but there is an order on the file, the contents of which have been communicated by virtue of the letter dated 27.02.2007. Mr Malhotra has brought the original file for the perusal of this Court. He read out the minutes of the hearing done before the appellate authority as well as the order passed on the file. There is no doubt that the order has been passed on the file and the impugned letter dated 27.02.2007 is merely a communication of the same. However, I feel that this is not the proper course to follow. The appellate authority is a quasi-judicial authority and it should pass a speaking order separately, which itself should be communicated to the parties. This, unfortunately, has not been done in this case. Apart from that, I find that the issues, which are specifically raised by Mr Rawal, have not been adequately dealt with by the Appellate Authority while disposing of the application for waiver.

6. Accordingly, I am of the view that the impugned communication as well as the order on which this communication is based, ought to be set aside. The same are set aside. The matter is remanded to the Appellate Authority to consider the application for waiver of pre-deposit afresh in the light of the submissions made by Mr Rawal as well as those made by representative of the

department. The application for waiver of pre-deposit is restored to the file of the Appellate Authority and the same shall be disposed of within three months.

This writ petition stands disposed of.

BADAR DURREZ AHMED
(JUDGE)

April 19, 2007
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